IN THE HIGH COURT OF UTTARANCHA AT NAINIAL

Writ Petition No. 758 of 2002 (M/B)

Tula Ram s/o Gauri Datt
R/o Village Sandli Talli,
P.O. Digolikhal,
Tehsil Dhumakote,
District Pauri Garhwal. …….. Petitioner.

Versus

1. State of Uttaranchal through
   Panchayat Secretary Uttaranchal,
   Dehradun.
2. District Magistrate, Pauri Garhwal.
3. Gram Panchayat, Vikas Adhikari,
   District Pauri Garhwal.
4. Aayukata, Gram Vikas, Pauri Garhwal ……. Respondents

……..

Sri M.S. Pal, Senior Advocate with Sri B.S. Pal, Advocate for the petitioner.
Sri J.P. Joshi, Addl. C.S.C. for respondents.

JUEGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla, C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

Sri M.S. Pal, the learned Senior Counsel for the petitioner.

Sri J.P. Joshi, the learned Additional Chief Standing Counsel for respondents.

They are heard on admission.

2. Petitioner Tula Ram has filed this petition for the following reliefs:

"a To issue a writ, order or direction in the nature of certiorari for quashing the order dated 23.10.2002 (Annexure-1) passed by respondent no.3.

b. To issue a writ, order or direction in the nature of mandamus commanding the respondents not to give effect to the order dated 23.10.2002 (Annexure-1) passed by respondent no.3 during the pendency of this writ petition before this Hon'ble Court;

c. To issue any other writ, order or direction which this Hon'ble Court deems fit and proper in the circumstances of the case;
d. To award cost of this writ petition to the petitioner."

3. The respondents have filed their court affidavit. In para 3 of the counter affidavit, following averments have been made:

"3- That before giving parawise reply to the writ petition, it is necessary to bring some relevant facts before this Hon'ble Court, which are as under:

A. That the writ petition has been filed with a prayer to issue a writ, order or direction in the nature of certiorari quashing the order dated 23.10.2002 (Annexure No.-1) passed by respondent no.3.
B. That the Uttaranchal Government on 19th June, 2002 was pleased to enact the Uttaranchal Three tier Panchayati Raj Amendment Act 2002 by which Section 11-F of the U.P. Panchayati Raj Act 1947 was amended. Section 11-F as amended, is being quoted blow:

11-F. Declaration of Panchayat area-

(1) For the purposes of this Act, the State Government may by notification declare any area comprising a village or group of villages, having, so far as practicable, a population of 300 in hill area and 1000 in plane area to be a Panchayat area for the purpose of this Act such name as may be specified.

Provided that the population shall not exceed 1000 in hill area and 5000 in plane area of the State as far as practicable.

Further provided that for the purpose of declaration of a Panchayat area no revenue village or any hamlet thereof shall be divided.

Also provided that if it is not practically possible to follow the above provision then the State Government may relax the aforesaid restrictions by order in the specific and unavoidable circumstances.

(2) The State Government may, on the request of the Gram Panchayat concerned or otherwise, and after previous publication of the proposal, by notification at any time:
(a) modify the area of any Pancyhayat area by including therein or excluding therefrom any area of a village or group of villages.

(b) alter the name of Panchayat area, or
(c) declare that any area shall cease to be a Panchayat area."

C. That in pursuance of the said Act, Government Notification was issued on 19th June 2002 itself, which was addressed to the Director, Panchayati Raj, Uttaranchal and to the District Magistrate, Uttaranchal. True copy of the Government Order dated 19th June 2002 is being filed herewith and is marked as Annexure No.C.A.1. to this counter affidavit.

D. That as per clause- 6 of the Government Order, it is clear that the village or the majra having the maximum population shall be named as the Village Panchayat.

E. That as per the census report of the year 2001, the Village Devtakhet is having the maximum population and, as such, it was rightly declared as the Gram Panchayat. True copy of the census report of the year 2001 is being filed herewith and is marked as Annexure No. C.A.2. to this counter affidavit.

F. That the grievance raised by the petitioner in the writ petition is misconceived and based on the unamended section 11 F of the U.P. Panchayti Raj Act 1947. However, as power the Uttaranchal Three Tier and Panchayati Raj Act 2002, the village-Devtakhet has been rightly declared as Gram Panchayat."

4. Thus, it is apparent that the name of Gram Panchayat Sandlitalli has been changed to Gram Panchayat Devtakhet as village Devtakhet, as per 2001 census, was having maximum population among the villages comprised in Gram Pancyhayat Sandlitalli.

5. Sri Pal, the learned Senior Counsel for the petitioner could not dispute the above factual scenario in the matter.

6. The writ petition, therefore, is liable to be dismissed and is hereby dismissed summarily.

(Prafulla. C. Pant, J.) 08.06.2006

(Rajeev Gupta, C.J.) 08.06.2006

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